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6 **BEFORE THE VICTIM COMPENSATION BOARD**
7 **OF THE STATE OF CALIFORNIA**
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9 In the Matter of:

10 **Michelle Marie Poulos**

11 **PC 4900 Claim No. 19-ECO-02**

Proposed Decision

(Penal Code § 4900 et seq.)

12 **Introduction**

13 On January 17, 2019, Michelle Marie Poulos (Poulos) submitted an application for
14 compensation as an erroneously convicted person to the California Victim Compensation Board
15 (CalVCB) pursuant to Penal Code section 4900. The application is based upon Poulos' 2001
16 conviction for criminal threats, for which she was incarcerated 431 days and has since been found
17 factually innocent. Poulos is represented by attorney Deirdre O'Connor of Seamus Law. The Office
18 of the Attorney General is represented by Deputy Attorney General Barton Bowers, who concedes
19 that Poulos is entitled to the requested compensation. CalVCB Senior Attorney Laura Simpton was
20 assigned to this matter. After considering all of the evidence in the record, along with the binding
21 determination of factual innocence, it is recommended the Board grant Poulos' application and the
22 Legislature appropriate \$60,340 as payment for being wrongfully imprisoned for 431 days.

23 **Procedural History**

24 On June 28, 2001, Poulos pleaded guilty to a single count of criminal threats against June Patti
25 (Patti) in Los Angeles County Superior Court case number YA048113.¹ Patti was the girlfriend of
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28 ¹ Pen. Code, § 422 (criminal threats); see also AG Exs. 2 at p. 12-13; 12 at 1.

Poulos' former boyfriend, and they had a child together.² Patti was the sole witness to the alleged criminal threats made against her by Poulos.³ In exchange for her plea, Poulos received a suspended two-year prison sentence and was placed on probation for three years.⁴

One year later, Poulos admitted violating the terms of her probation after pleading no contest to an unrelated felony for possessing methamphetamine in Los Angeles County Superior Court case number YA052813. At the combined sentencing hearing for both matters on September 19, 2002, the trial court imposed the previously-suspended two-year prison sentence for criminal threats in case number YA048113 and further imposed a concurrent term of two years for methamphetamine possession in case number YA052813. Poulos received credit for 59 days served.⁵

Poulos was released from prison on September 25, 2003. She served a total of 431 days for criminal threats in case number YA048113, consisting of 59 days pre-sentencing and 372 days post-sentencing from September 19, 2002, through September 25, 2003.⁶ During this same period of time, Poulos concurrently served 372 days for methamphetamine possession in case number YA052813. Poulos was discharged from parole the following year on October 25, 2004.⁷

Thirteen years later, on January 23, 2017, the Los Angeles County Superior Court granted Poulos' motion to vacate and dismiss her criminal threats conviction in case number YA048113 pursuant to Penal Code section 1473.7. The prosecution joined the motion after having "lost trust in the witness" Patti.⁸ On October 11, 2017, the superior court issued a finding of factual innocence within the meaning of Penal Code section 1485.55 at the joint request of Poulos and the prosecution. The court specifically found that Patti had "lied and fabricated information, and [Poulos] suffered as a result of it."⁹

² App. Memo at p. 2; AG Ex. 8 at p. 66.

³ App. Memo at p. 3, App. Ex. A (Mtn for Factual Innocence) at p. 7; AG Exs. 1 at p. 2; 8 at p. 69-70.

⁴ AG Ex. 2 at pp. 12-13.

⁵ AG Exs. 2 at 17; 6 at 11.

⁶ App. Memo at p. 4 n.3; O'Connor Declaration at pp. 1-2; AG RL at p. 5.

⁷ AG Ex. 11 at p. 85.

⁸ AG Ex. 7 at p. 61.

⁹ AG Exs. 7 at p. 61; 9 at pp. 76-77.

1 These rulings were precipitated by the 2014 exoneration of Susan Mellen, whose erroneous conviction
2 for murder and subsequent incarceration for 17 years was also based upon false testimony from Patti.¹⁰

3 Poulos next challenged the validity of her unrelated conviction for methamphetamine
4 possession in case number YA052813 by filing a motion to vacate the judgment on November 9, 2017.
5 Poulos argued that relief was warranted because, but-for her erroneous conviction for criminal threats,
6 she would not have received a prison sentence for her drug offense. Instead, she would have been
7 eligible to participate in rehabilitation programs for substance abuse that permit dismissal of all charges
8 upon successful completion. Since Poulos completed a drug treatment program while incarcerated,
9 she moved for dismissal on the basis of factual innocence pursuant to Penal Code section 1473.7 and
10 in the interests of justice pursuant to Penal Code section 1385.

11 The Los Angeles County Superior Court initially denied the motion, which Poulos successfully
12 appealed to the Second District Court of Appeal.¹¹ Upon remand on May 24, 2019, the superior court
13 granted the motion to vacate the conviction in case number YA052813 solely in the interests of justice
14 pursuant to Penal Code section 1395. The court observed that Poulos “would have received a
15 probationary sentence in this [drug] case without the prior conviction in case Y[A]048113 [for criminal
16 threats that] no longer exists.” The court declined to find Poulos factually innocent of the underlying
17 offense for possessing methamphetamine.¹²

18 Meanwhile, on January 17, 2019, Poulos submitted her application for compensation under
19 Penal Code section 4900. Under then-existing law, her application was untimely by more than 12
20 years, as former Penal Code section 4901 required all applications to be submitted within two years
21 following acquittal, pardon, or release from custody, which includes parole.¹³ After briefing on this
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23 ¹⁰ App. Memo at pp. 4-5; see also *In the Matter of the Claim of Susan Mellen*, PC 4900 application
24 granted Dec. 15, 2014, at <https://victims.ca.gov/docs/pc4900/PC-4900-Approved-Mellen.pdf?2019-06-27>.

25 ¹¹ AG Ex. 10 at pp. 80-83 (*People v. Michelle Poulos*, Second District Court of Appeal case number
26 B288094, unpublished opinion filed April 23, 2019).

27 ¹² AG Ex. 5 at pp. 40-42.

28 ¹³ Former Pen. Code, § 4901, subd. (a), added by Stats.2016, c. 31 (S.B.836), § 251, eff. June 27, 2016.

1 issue, the matter was stayed until January 2, 2020, when section 4901 was amended by Senate Bill
2 269 to expand the deadline for submitting an application to ten years following dismissal of charges.¹⁴
3 Because Poulos' conviction for criminal threats was dismissed in 2017, her application was deemed
4 timely filed and a response letter from the Attorney General was requested.¹⁵

5 The Attorney General timely responded on February 28, 2020, conceding that Poulos was
6 entitled to a recommendation for compensation for all 431 days of her erroneous imprisonment in case
7 number YA048113 for criminal threats. No offset applied for the concurrent period of time that Poulos
8 had served in case number YA052813 for methamphetamine possession, as that conviction was no
9 longer valid. Following this response, Poulos waived further briefing or hearing before a hearing officer
10 on March 4, 2020, and the record closed at that time.

11 **Determination of Issues**

12 Penal Code section 4900 allows a person, who has been erroneously convicted and imprisoned
13 for a felony offense, to apply for compensation from CalVCB.¹⁶ As of January 1, 2020, the application
14 must be submitted no more than 10 years after dismissal of charges, release from custody, acquittal, or
15 pardon.¹⁷ Untimely or premature claims must be rejected for lack of jurisdiction without further
16 consideration by the Board.¹⁸

17 Once an application has been properly filed, CalVCB typically requests a written response from
18 the Attorney General pursuant to Penal Code section 4902, and then an informal evidentiary hearing
19 ensues in accordance with Penal Code section 4903.¹⁹ Under Penal Code section 1485.55, CalVCB
20 is bound by any "express factual findings" rendered by a court when granting a habeas conviction,
21 vacating a conviction, or issuing a certificate of factual innocence. Ultimately, the claimant bears the
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23 ¹⁴ Pen. Code, § 4901, subd. (a), added by Stats.2019, c. 473 (S.B. 269), § 2, eff. Jan. 1, 2020; see also
24 CalVCB letter staying disposition for untimeliness, dated Sept. 3, 2019.

25 ¹⁵ See CalVCB email lifting stay, dated Jan. 2, 2020.

26 ¹⁶ Pen. Code, § 4900.

27 ¹⁷ Pen. Code, § 4901, added by Stats.2019, c. 473 (S.B. 269), § 2, eff. Jan. 1, 2020.

28 ¹⁸ Cal. Code Regs., tit. 2, § 642, subd. (a).

¹⁹ Pen. Code, §§ 4902, subds. (a)-(b), 4903, subd. (a); Cal. Code Regs., tit. 2, § 615.1, subd. (a).

burden to prove, by a preponderance of evidence, that (1) the crime with which she was charged was either not committed at all, or, if committed, was not committed by her, and (2) she sustained injury through her erroneous conviction and imprisonment.²⁰ If the claimant satisfies her burden of persuasion for both elements, then pursuant to Penal Code section 4904, CalVCB shall recommend to the Legislature an award of compensation. Compensation is calculated at the rate of \$140 per day for pre-and post-conviction confinement.²¹

A. Automatic Compensation Statute Does Not Apply

An exception to CalVCB's standard procedure occurs when a claimant has obtained a finding of factual innocence for each and every conviction underlying her incarceration. In that case, Penal Code section 1485.55 compels CalVCB to assume both requisite elements of innocence and injury for a successful claim under Penal Code section 4900 and to recommend compensation accordingly. Penal Code section 4902 further requires CalVCB to recommend payment without a hearing or response from the Attorney General and within 30 days after the application is filed.

This exception does not apply to Poulos' application because she received a finding of factual innocence for just one of the two convictions underlying her erroneous imprisonment. Accordingly, Poulos continues to bear the burden to demonstrate both innocence and injury in this administrative proceeding.

B. Binding Determinations of Innocence and Injury Compel Compensation

When determining whether Poulos has met her burden, CalVCB is statutorily bound by the superior court's express findings.²² CalVCB unequivocally accepts, as found by the court, that Poulos is actually innocent of criminally threatening Patti in case number YA048113. As the court conclusively determined, Patti "lied and fabricated information" against Poulos, and Poulos "suffered as a result of

²⁰ Pen. Code, §§ 4903, subd. (a), 4904.

²¹ Pen. Code, § 4904.

²² Pen. Code, §§ 1485.55; 4902, subd. (a).

1 it.”²³ CalVCB further accepts, as found by the court, that Poulos would have received probation,
2 instead of a prison sentence, for her methamphetamine conviction in case number YA052813, had she
3 not been previously convicted of criminal threats against Patti.²⁴ Considered together, these binding
4 determinations conclusively satisfy Poulos’ burden to prove innocence and injury.

5 Poulos served a total of 431 days imprisonment as a result of her erroneous conviction for
6 criminal threats in case number YA048113. Although Poulos simultaneously served 372 days for
7 possessing methamphetamine in case number YA052813, she only received this concurrent prison
8 term as a result of her erroneous conviction in case number YA048113. Moreover, her conviction for
9 possessing methamphetamine has since been vacated. As such, no part of Poulos confinement for
10 criminal threats may be attributed to any lawful conviction. CalVCB recognizes that, but for Poulos’
11 erroneous conviction for criminal threats, she would not have spent 431 days “illegally behind bars,
12 away from society, employment, and [her] loved ones.”²⁵ Therefore, Poulos is entitled to a
13 recommendation of compensation in the amount of \$60,340, representing \$140 for each day of her
14 erroneous incarceration.

15 This result is not altered by Poulos’ guilty plea to the underlying offense. Subdivision (c) of
16 Penal Code section 4903 requires the board to “deny payment of any claim if the board finds by a
17 preponderance of the evidence that a claimant pled guilty with the specific intent to protect another from
18 prosecution for the underlying conviction for which the claimant is seeking compensation.” The record
19 does not support any such finding. To the contrary, the superior court definitively determined that the
20 underlying offense of criminal threats simply did not occur. As elaborated in Poulos’ declaration, she
21 pleaded guilty solely to avoid the risk of a longer sentence if she had proceeded to trial and been
22 convicted based upon Patti’s fabricated allegations.²⁶ Accordingly, Poulos remains entitled to a
23 recommendation of compensation regardless of her guilty plea.

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26 ²³ AG Exs. 7 at p. 61; 9 at pp. 76-77.

27 ²⁴ AG Ex. 5 at pp. 40-42.

28 ²⁵ *Holmes v. California Victim Compensation & Government Claims Bd.* (2015) 239 Cal.App.4th 1400.

²⁶ AG Ex. 8 at p. 71.

1 **Conclusion**

2 CalVCB hereby grants Poulos' application for compensation under Penal Code section 4900
3 and, therefore, recommends that the Legislature appropriate \$60,340 as payment to Poulos for her 431
4 days of erroneous incarceration.

5 Date: March 23, 2020

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7 Laura Simpton
8 Senior Attorney
9 California Victim Compensation Board
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10 **Michelle Marie Poulos**

11 **PC 4900 Claim No. 19-ECO-02**

Notice of Decision

(Penal Code § 4900 et seq.)

12 On April 16, 2020, the California Victim Compensation Board adopted the attached Proposed
13 Decision of the Hearing Officer as its Decision in the above-referenced matter.
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15 Date: April 20, 2020

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17 Michelle Greer
18 Board Liaison
19 California Victim Compensation Board
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